Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

F. C. JOHNSON d/b/a
F.C. JOHNSON CONSTRUCTION CO.,
Petitioner

V.

JOHN HYNEMAN
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR A WRIT OF CERTIORARI

F. C. JOHNSON
420 PEYTON ROAD WEST
HOLLY SPRINGS
MISSISSIPPI 38635
(601) 252-2501
IN PROPRIA PERSONA

8 6PP

QUESTIONS PRESENTED

1. Can the State of Mississippi close its courts to one of its Sovereign Citizen(s) because of ineffective counsel?

2. Can the courts in the State of Mississippi deny Due Process and Equal Protection of the law to one of its Sovereign Citizen(s) because of ineffective counsel?

3. Can the courts in the State of Mississippi deny a Common Law Trial by Jury to one of its Sovereign Citizen(s) because of ineffective Counsel?

4. Can the courts in the State of Mississippi take Property from one of its Sovereign Citizen(s) because of ineffective Counsel?

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NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM 1994

F. C. JOHNSON d/b/a
F. C. JOHNSON CONSTRUCTION COMPANY
Petitioner,

VS.

JOHN HYNEMAN, Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE

OF MISSISSIPPI

Petitioner, F. C. JOHNSON d/b/a F. C. JOHNSON CONSTRUCTION CO., respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Mississippi regarding its decision whereby it dismissed Appellant's Brief, so Ordered the 16th day of June, 1994, see Appendix 25a, and its Order of the 25th day of July 1994, see Appendix 27a

which denied Appellant's Petition To Set Aside Order of the 16th day of June 1994.

OPINIONS BELOW

The unpublished written Opinion of the Circuit Court of DeSoto County Mississippi appears in Appendix 29a of this Petition, wherein the Trial Court's Order Granting Motion To Dismiss Complaint Without Prejudice.

JURISDICTION

Jurisdiction is conferred upon this United States Supreme Court pursuant to the U.S.A. Constitution Article III § 1 and 2; Rules of the Supreme Court of the United States Rule 10 .1. (a) (b) and (c); Title 28 U.S.C. § 1251 (b) (2); Title 28 U.S.C. § 1254 (1); Title 28 U.S.C. § 1257 (3).

STATUTES, CODES AND CONSTITUTIONAL PROVISIONS INVOLVED

Amendments I, V VI, VII, IX and XIV are set forth in Appendix 31a

The State of Mississippi Constitution, Bill of Rights, Article 3 § 24 and 25 are set forth in Appendix 33a.

Poth. Proc. Civile pt.1, c2 (Black's 4th Ed. p. 1442 and MRCP Code of Judicial Conduct, Canon 3 § C "Disqualification", subsection (1) (a) are set forth in Appendix 36a.

MCA 85-7-141 is set forth in Appendix 37a.

MRCP Rule 4(h) is set forth in Appendix 39a.

MRCP Rule 26 and 56(f) are set forth in Appendix 40a.

STATEMENT OF THE CASE

F. C. JOHNSON d/b/a F. C. JOHNSON CONSTRUCTION CO., filed a Complaint, by and through his Attorney of record, Mike Kemp, against the Defendant John Hyneman, for Breach of Contract for money's owed, on 7/26/91. On that same date Summons was issued and given back to Mike Kemp. Sixteen months later, the

Court Clerk entered a Clerk's Motion To Dismiss for Want of Prosecution, it was filed and a copy was served to Attorney Mike Kemp on that same date 11/15/92. During these 16 months this Petitioner had no knowledge that the summons pursuant hereto had not been issued with the said Complaint. On 12/11/92 the said Summons was issued after the said clerk had noticed the said attorney. On 12/11/92 the said Attorney told the said clerk "do not dismiss case". On 12/18/92 the Complaint and Summons was executed returned and filed. Note, seventeen months had elasped since the Complaint was filed and issuance, service and return was had. On 1/15/93 a Response To Complaint and Counter-Claim was filed. After researching and studying case law and rules of court the original Plaintiff discovered he had ineffective counsel, therefore, on 2/10/93 he, in pro-

pria persona filed a Verified Petition by Plaintiff for Order Permitting Withdrawal of Counsel, along with a Petition for Extension of Time on 2/10/93. On 2/23/93 the Plaintiff filed an affidavit in support of Plaintiff's Response to Defendant's Response and Counter-Claim along with a Notice and Demand for a **Common-law trial by Jury** and a Petition to Withdraw or Remove.

On 3/1/93 Defendant John Hyneman's First Request for Production of Documents and Things from the Plaintiff was filed along with Defendant John Hyneman's First Set of Interrogatories to Plaintiff. Therefore, due to reasons set forth therein the Plaintiff filed a Petition for a Protective Order on 3/29/93 along with Original Plaintiff's Response and objection to Defendant John Hyneman's First Set of Interrogatories, and the Original Plaintiff's Response and Objection to Defendant John Hyneman's

First Request for Production of Documents and Things from Original Defendant John Hyneman.

On 4/1/93 an Order was issued Permitting Withdrawal of Counsel (Mike Kemp). The Order Permitting Withdrawal of Counsel of 4/1/93 is set forth in Appendix 42a.

On 4/2/93, note, the day after the court order cited above, the counsel for the Defendant filed a Motion To Dismiss Complaint Without Prejudice and a Motion for Partial Summary Judgment, including a Brief and an affidavit from Dudley Black Bridgeforth therewith, including a Notice of Hearing from Defendant's Counsel, Scheduling a hearing for the 29th day April, 1993 at 9:00 A.M. three days later an Amended Notice of Hearing was filed on 4/5/93 for the 23rd day of April 1993 at 9:00 A.M., note, this hearing was conveniently set within the last few days of Discovery,

pursuant to the 30 day Rule, MRCP Rule 26. See Appendix 40a.

On 4/8/93 the Plaintiff filed a Response and Objection to Defendant's Motion for Partial Summary Judgment, Affidavit of Original Plaintiff and Memorandum At Law, along with an Ex Parte Petition for Order to set Aside; Plaintiffs Affidavit and Memorandum At Law accompanied by Plaintiff's Response and Objection to Notice of Hearing and Plaintiff's Affidavit and Plaintiff's Response to Defendants Motion To Dismiss Complaint Without Prejudice; Affidavit of Plaintiff and Memorandum At Law; and Plaintiff's Rebuttal to Defendant's Brief In Support Of Partial Summary Judgment and Memorandum At Law.

On 4/22/93 a Response to Plaintiff's First Set of Request for Production of Documents and Things was filed.

On 4/23/93 A Durable Power of Attorney in Fact was filed by the Plain-

tiff..

On 4/23/93 the hearing was held, and all the pleadings and memorandums at law filed by F. C. JOHNSON this petitioner were ignored and never ruled upon, even though, after the Trial Court took Judicial Notice of all of them. Notwithstanding the fact, that the Trial Court Judge ruled solely upon the Motion To Dismiss Without Prejudice, entered by the Defendant's Counsel. This Petitioner was **denied a Jury Trial, denied Discovery and denied access to his court for redress of grievance.**

On 4/23/93 the Court Reporter filed her Estimate of Costs for Appeal.

On 5/5/93 the Plaintiff filed a Petition for a Certified Final Order, Memorandum At Law and Affidavit.

On 5/14/93 the Order Granting Motion to Dismiss Complaint Without Prejudice was filed.

5/19/93 Plaintiff's Notice of Ap-

peal was timely filed.

On 5/19/93 and 5/26/93 Plaintiff filed a Direction to the Clerk of the Circuit Court.

On 7/7/93 Plaintiff filed a Certificate of Compliance MSCR Rule 11(b)(1) along with a Direction to the Clerk and Court Reporter.

The Appellant, F. C. JOHNSON, filed his Appeal Brief with the State of Mississippi Supreme Court on or about December 7, 1993.

The Appellee through counsel, filed a Reply Brief and a Motion To Strike Brief for the Appellant and Attachments and To Docket and Dismiss Appeal, on or about January 7, 1994.

On or about January 13, 1994 Appellant filed an Objection and Response and Petition To Strike Brief of Appellee and His Motion To Strike for the Appellant and Attachments and to Docket and Dismiss Appeal and Memoran-

dum At Law.

On or about January 19, 1994 the Appellant filed his Final Rebuttal Brief.

On the 16th day of June, 1994, the Supreme Court of Mississippi filed an Order Dismissing the Appeal of this Appellant. See Appendix 25a.

On or about the 28th day of June, 1994, the Appellant filed a Petition To Set Aside Order and Memorandum At Law.

On the 25th day of July, 1994 the Supreme Court of Mississippi filed an Order therby denying Appellant's Petition To Set Aside Order (of June 16, 1994).

The Appellant has tried numerous times to acquire a Certified Docket Sheet of the actual proceedings and file dates, transcripts of the hearings, and Certified Copies of the minutes of the said hearings, pursuant to the issuance of the Orders mentioned above. Appellant has offered to pay cost on all requested Clerk's papers, but has

been denied all requests. See Appendix 44a, 45a, 46a.

It would be repetitious to herein repeat the filings of pleadings, briefs, motions, etc. already contained in the statemnt of the case at pages 3 through 11 herein.

The Order of June 28, 1994, does not bear a legible signature, thus Appellant has no knowledge of who signed it.

THE PROCEEDINGS BELOW

The Supreme Court of Mississippi issued a Mandate on July 7, 1994 pursuant to the Order of the 16th day of June, 1994. See Appendix 49a.

REASONS FOR GRANTING WRIT

The Writ should be granted to resolve a direct conflict between the laws, regulations Constitution of the State of Mississippi and the Constitution of the United State of America; and the conflicts are: that the State

of Mississippi by and through its Courts **closed its courts to F. C. JOHNSON, a Sovereign Citizen,** because he had ineffective counsel. F. C. Johnson hired counsel to prepare, file and prosecute a lawsuit, involving a Breach of Contract and money's owed. Counsel drafted the Complaint, filed the Complaint, but withheld the Summons for seventeen months, before the lawsuit i.e. Summons and Complaint was properly executed and returned. Counsel only procured service after the Clerk filed her Motion To Dismiss for Want of Prosecution. And pursuant to MRCP Rule 4(h) states that the lawsuit and summons must be executed within 120 days after filing of the Complaint. So, Johnson's Counsel was approximately 13 months late, thus, his complaint was dismissed without prejudice. This action or failure to act constituties **"ineffective counsel".** As set forth in the following Constitu-

tional cites and case laws:

UNITED STATES OF AMERICA CONSTITUTION, BILL OF RIGHTS, ARTICLE VI: quote:

"..to have assistance of counsel.."

and at id. Article IV: quote:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

and the STATE OF MISSISSIPPI CONSTITUTION, BILL OF RIGHTS, ARTICLE 3 § 25: quote:

"No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, or **counsel**, or both".

and in MARBURY V. MADISON, 5 US 364 at p. 391 quote:

"that a law repugnant to the Constitution is void and that courts as well as other departments are bound by that instrument." i.e. The Constitution is the Supreme Law of the Land.

and in MIRANDA V. ARIZONA, 384 US 436

at p. 491 quote:

"Where Rights secured by the Constitution are involved there can be no rule-making or legislation which would abrogate them."

and in POWELL V. ALABAMA, 287 US 44 at p. 70 quote:

"The state decision which refer to the matter, invariably recognize the **right** to the aid of counsel as fundamental in character." Id 68-69.

and in JOHNSON V. ZERBST, 304 US 458 (1938) p. 463 quote:

"He requires the guiding hand of counsel at every step in the proceedings against (or for) him."

and in STRICKLAND V. WASHINGTON, 466 US 668 p. 686 quote:

"..the right to counsel is the right to **effective assistance of counsel."**

and in McMANN V. RICHARDSON, 397 US 759 at p. 771 quote;

"..entitled to **effective** assistance of

competent counsel."

There is also a conflict between the State of Mississippi and the Constitution of the United States of America, as set forth in Article IV § 2, quote:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

I would now show unto this Court that the following state courts have rendered a decision on ineffective assistance of counsel verses effective assistance of counsel:

NEBRASKA: STATE V. REDDICK, 430 N.W. 2d (Neb. 1988) p. 544 at 5 quote:

"To assert a successul claim of ineffective assistance of counsel...(1) that his or her attorney failed to preform as well as an attorney with ordinary training and skill ...(3) that if the attorney had been effective, there is a resonable probability that the results would have

been different;.."

INDIANA: WILSON V. STATE, 51 N.E 2d 848 (1943) p. 855 qyote:

"..to be represented by **competent** counsel." (means adequate counsel)

TENNESSEE: BAXTER V. ROSE, 523 S.W 2d 930 p. 934 quote:

"Counsel should afford reasonable opportunity to prepare.."

Under Article IV § 2, this Petitioner is "entitled to all Privileges and Immunities of Citizens in the several States", and they recognize the issue of ineffective counsel.

There exist a conflict between the State of Mississippi and the Constitution of the United States of America, and decisions between the United States Supreme Court and the Supreme Court decisions of the several states, based upon the U.S. Constitution. MRCP Rule 4(h) states, that a Summons and Complaint must be served within 120 days

unless good cause is shown, and for a licensed attorney or lawyer, not sick or disabled to serve a summons and complaint 17 months late, would be good cause shown under Rule 4(h) see Appendix 39a., and the Trial Court erred in not recognizing this ineffective counsel, as set forth in all the afore constitutional cites and case law, etc. The Trial Court erred as in BOYD V. U.S. 116 US 616 (1886) quote:

> "It is the **duty** of the courts to be watchful for the **Constitutional Rights** of the Citizen and against any stealthy encroachments thereon."

The Trial Court erred by not recognizing the ineffectiveness of counsel that was before the Trial Court, and thereby Dismissing the Plaintiff's Complaint, did therefore, **"close the doors of the court to this Sovereign Citizen,"** thus, violating his **Due Process** and **Equal Protection**, see USA Consti-

tution Bill of Rights Art. V. and XIV in Appendix 31a., and see State of Mississippi Constitution Art. 3 § 24 and § 25 in Appendix 33a.

The actions of the Trial Court by not recognizing the ineffective counsel "closed the doors of the court to F. C. JOHNSON", thus, denied **Due Process** and **Equal Protection of law.** The Trial Court was bias and should have disqualified himself, see Appendix 34a. the State of Mississippi Constitution Art. 6 Judiciary § 155 and 165, and Poth. Proc. Civile ptl, c2 (Black's 4th Ed. p. 1442) and MRCP CODE OF JUDICIARY CONDUCT, CANON 3 § c Disqualification, subsection (1) (a) in Appendix 36a. As to the ineffective counsel he also failed to execute or perfect a materialmen's lien, as set forth in MCA 85-7-141 see Appendix 37a.

Take Judicial Notice of the fact that the Trial Court was backlogged

with civil and criminal cases, hundreds of cases, although, miraculously Attorney Buntin's law firm managed to procure a hearing date within a few days of the deadline of discovery as to stop discovery and in return, again, "to close the doors of the court to a Sovereign Citizen F C. JOHNSON", which demonstrates a clear violation of **Due Process** and **Equal Protection.**

Plaintiff timely responded and objected to Defendant's Motion To Dismiss Complaint Without Prejudice, with an affidavit and a Memorandum At Law, and pursuant to CELOTEX CORP V CATRETT, 477 US 317 p. 326, and ANDERSON V LIBERTY LOBBY INC., (1986), 477 US 242 p. 250, see Appendix 40a. The Defendant's Motion To Dismiss Without Prejudice and Motion For Partial Summary Judgment, were premature and untimely as both sides were in discovery, and Defendant had not completed discovery. The Trial Court erred

in scheduling these two motions, over the objections and timely notice and affidavit and memorandum at law, of Plaintiff, with a hugh backlog of cases before the court, in violation of MRCP Rule 56 (f), see Appendix 40a.

The Trial Court with a demand for a **Common-law Trial by Jury**, before it, violated the USA Constitution, Bill of Rights, Art. VII, see Appendix 31a, when the Plaintiff had timely demanded and paid for a Common-law Trial by Jury by dismissing his case and "closing the doors to his courtroom", because of ineffective counsel. See Constitutional cites and case law on pages 13 through 16 herein.

The State of Mississippi Constitution, Art. 3 § 31. Bill of Rights, see Appendix 33a, conflicts with the USA Constitution, Bill of Rights, Art. VII, as the Mississippi Constitution allows a jury trial to be decided by 9

(nine) or more, where as, a Common-law Jury (USA Constitution) is 12 (twelve) and is decided by 12 and not 9 or more.

The Trial Court of the State of Mississippi closed the court and denied a Common-law Trial by Jury and denied the Plaintiff his right to secure his property owed to him by John Hyneman, Defendant, in violation of the USA Constitution, Bill of Rights, Art. V, see Appendix 31a, and also USA Constitution, Bill of Rights Art. XIV, because of ineffective counsel, see pages 13 through 16 herein.

The Supreme Court in the State of Mississippi, is in complete agreement with the Trial Court on every issue set forth in this petition for Writ of Certiorari by dismissing the Appeal Without hearing or rendering a decision. A direct conflict exist between the laws, regulations and Constitution of the

State of Mississippi and the Constitution of the United States of America and the decisions of the Supreme Court of the United States, which directly affects the petitioner as to secure his Constitutional Rights and GOD-given inalienable Rights, as set forth in this Petition for Writ of Certiorari.

CONCLUSION

For the reasons set forth above a Writ of Certiorari should issue to review the judgment and opinion of the Suprem Court of the State of Mississippi in this matter.

Date: September 9, 1994.

Respectfully Submitted,

Without Prejudice

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Holly Springs
Mississippi 38635
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APPENDIX

BEST AVAILABLE COPY

IN THE SUPREME COURT OF MISSISSIPPI

NO. 93-CA-00608

F. C. JOHNSON d/b/a JOHNSON CONSTRUCTION CO. Appellant

V.

JOHN HYNEMAN Appellee

ORDER

This matter came before a panel of this Court consisting of Chief Justice Hawkins, Justice Sullivan and Justice McRae on the Appellee's Motion to Strike Brief for the Appellant and Attachments and to Docket and Dismiss appeal. In response, Appellant filed a Petition to Strike the Brief of Appellee. After due consideration this court finds that both Motions to Strike should be denied, but that Appellee's Motion to Docket and to Dismiss is well taken and should be granted.

IT IS THEREFORE ORDERED that the Appellee's Motion to Strike Brief of the Appellant be, and the same is,

hereby denied.

IT IS FURTHER ORDERED that the Appelant's Motion to Strike Brief of the Appellee be, and the same is, hereby denied.

IT IS FURTHER ORDERED that the Appellee's Motion to Docket and Dismiss Appeal be, and the same is, hereby granted and this appeal is dismissed. Appellant is taxed with all costs of this appeal.

SO ORDERED this the 16th day of June, 1994.

/s/ Michael Sullivan
MICHAEL SULLIVAN, JUSTICE
FOR THE COURT

IN THE SUPREME COURT OF MISSISSIPPI

NO. 93-CA-608

F. C. JOHNSON D/B/A JOHNSON CONSTRUCTION CO. — Appellant

V.

JOHN HYNEMAN — Appellee

ORDER

Appellant's Petition To Set Aside Order came before a panel of this Court consisting of Justice Pittman, Justice Banks, and Justice Roberts. The Appellant's Petition To Set Aside Order alleges that his appeal should be reinstated and that this Court's Order which dismissed the appeal should be set aside. This Court finds that the Appellant's Petition to Set Aside Order is without merit and should be denied.

THEREFORE, IT IS ORDERED that the Appellant's Petition To Set Aside Order be, and hereby is, denied.

SO ORDERED, this, the 25th day of July , 1994.

/s/ ? ?
FOR THE COURT

NOTE: Signature on this was not legible, no name was typed on Order, requested verification which was denied

IN THE CIRCUIT COURT OF DESOTO COUNTY

MISSISSIPPI

F. C. JOHNSOND/B/A F. C. CONSTRUCTION CO. — PLAINTIFF AND COUNTER - DEFENDANT

VS.

JOHN HYNEMAN — DEFENDANT AND COUNTER-PLAINTIFF

ORDER GRANTING MOTION TO DISMISS COMPLAINT WITHOUT PREJUDICE

THIS CAUSE CAME on to be heard on the 23rd day of April, 1993 upon the Motion for Partial Summary Judgment and Motion to Dismiss Complaint Without Prejudice, both filed herein by the Defendant John Hyneman, and the Plaintiff and Counter-Defendant F. C. Johnson having been present before the Court in his own person and the Defendant and Counter-Plaintiff John Hyneman having been represented by counsel, and the Court having been fully advised of the Motions, and having heard the argument of both parties,

IT IS, THEREFORE, ORDERED, AND AD-

JUDGED that Defendant's Motion To Dismiss Complaint Without Prejudice be, and hereby is granted; and the Complaint is hereby dismissed without prejudice.

IT IS FURTHER ORDERED, AND ADJUDGED that Defendant's Motion for Partial Summary Judgment is not addressed by the Court in light of the Court's ruling dismissisng the Complaint Without Prejudice.

SO ORDERED AND ADJUDGED this the 12th day of May, 1993 nunc pro tunc to April 23, 1993.

/s/ George C. Carlson
CIRCUIT COURT JUDGE

II:/MELISSA/DI/HYNEMAN/MTNDISMS.ORD

UNITED STATES OF AMERICA CONSTITUTION

AMENDMENT I:

"...to petition the government for a redress of grievances."

AMENDMENT V:

"...nor be deprived of life, liberty or property, without **due process of law;** nor shall private **property be taken** for public use without just compensation."

AMENDMENT VI:

"...to have the **assistance of counsel..**"

AMENDMENT VII:

"in suits at **common-law,** where the value in controversy shall exceed twenty dollars, the **right of trial by a jury shall be preserved."**

AMENDMENT IX:

"The enumeration in the Constitution, of **certain rights,** shall **not** be construed to deny or disparage **others** retained by the people."

AMENDMENT XIV:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

THE STATE OF MISSISSIPPI CONSTITUTION,

BILL OF RIGHTS

ARTICLE 3 § 24:

"All courts shall be open; and every person for an injury done him in lands, goods, person, or reputation, shall have remedy by **due course of law**, and **right** and **justice** shall be administered without **sale, denial, or delay.**"

ARTICLE 3 § 25:

"No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or **counsel**, or both."

ARTICLE 3 § 31:

"The right of trial by jury shall remain inviolate, but the legislature may, by enactment, provide that in all civil suites tried in the circuit and chancery court, nine or more jurors may agree..."

THE STATE OF MISSISSIPPI CONSTITUTION

ARTICLE 6, JUDICIARY

SECTION 155:

"The judges of the several courts of this state, shall, before they proceed to execute the duties of their respective offices, take the following oath or affirmation, to-wit: 'I,_____, solemanly swear (or affirm) that I will administer justice **without respect to persons** and to **equal right** to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as according to the best of my ability and understanding, agreeably to the **Constitution** of the United States and the Constitution and laws of the State of Mississippi. So help me God."

SECTION 165:

"No judge of any court shall preside on the trial of any cause, where the

parties or either of them, shall be connected with him by affinity of consanguinity, or where he may be interested in the same, except by the consent of the judge and of the parties."

DISQUALIFICATION AND RECUSATION

OF JUDGE

RECUSATION:

POTH. PROC. CIVILE ptl, c2 (Black's 4th Ed p. 1442) "in civil law. A species of exception or plea to the jurisdiction, to the effect that the particular judge is **disqualified** from hearing the cause by reason of **interest or prejudice.**" (§5)

MRCP CODE OF JUDICIAL CONDUCT, CANON 3 § C "Disqualification, Subsection (1) (a):

"He should be unswayed by partisan interests, public clamor, or fear of criticism."

MISSISSIPPI CODE ANNOTATED 85-7-141

LIENS

§85-7-141. Commencement of suit to enforce lien.

Any person entitled to and desiring to have the benefit of such lien shall commence his suit in the circuit court of the county in which the property or some part hereof is situated, if the principal of his demand exceeds two hundred dollars, within twelve months next after the time when the money due and claimed by the suit became due and payable, and not after; and the suit shall be commenced by petition, describing with reasonable certainty the property upon which the lien is averred to exist, and setting out the nature of the contract and indebtedness, and the amount thereof; and the plaintiff shall file therewith in all cases, except where the

whole work or materials, or both, were furnished in pursuance of a written contract for an aggregate price, a bill of particulars exhibiting the amount and kind of labor performed, and of materials furnished, and the prices at which and times when the same were performed and furnished; and such suits shall be docketed and conducted as other suits in said court, and may be tried at the first term.

MRCP RULE 4(h)

RULE 4(h) "provides that service upon a defendant must be made within 120 days after the filing of the complaint or the cause shall be dismissed without prejudice as to that defendant unless good cause can be shown as to why service could not be made."

MRCP RULE 26 and 56(f)

RULE 26:

"(a) Discovery Methods. Parties may obtain discovery by one or more methods; depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the court orders otherwise under subdivisions (c) or (d) of this rule, the frequency of use of these methods is not limited."

RULE 56(f):

"When Affidavits Are Unavailable. Should it appear from the affidavits of a PARTY opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse that application for judgment or may order a

continuance to permit affidavits to be obtained or depositions to be had or may make such order as is just."

IN THE CIRCUIT COURT OF DESOTO COUNTY

MISSISSIPPI

F. C. JOHNSON D/B/A F. C. JOHNSON CONSTRUCTION CO. — PLAINTIFF AND COUNTER-DEFENDANT

VS. CIVIL ACTION NO. CV91-316-C/D

JOHN HYNEMAN — DEFENDANT AND COUNTER-PLAINTIFF

ORDER PERMITTING WITHDRAWAL OF COUNSEL

BE IT REMEMBERED that there came before this Court in this cause a pleading termed "Verified Petition By Plaintiff For Order Permitting Withdrawal of Counsel" filed by the Plaintiff, pro se, on February 10,1993, and the Court having considered same finds the following:

I.

That the Plaintiff, Freddie C. Johnson, d/b/a F. C. Johnson Construction Company, filed pleadings on his own behalf in this cause on February 10, 1993, seeking to permit the withdrawal of his counsel, Michael L. Kemp of

Holly Springs, Mississippi, from further representation of him, and that he be allowed to proceed from that time forward to represent himself, pro se.

II.

That, in as much as the Plaintiff desires to represent himself and does not wish to be represented by an attorney, said withdrawal should be allowed, effective February 10, 1993.

SO ORDERED this the 27th day of March, 1993, nunc pro tunc February 10, 1993.

/s/ George C. Carlson
CIRCUIT COURT JUDGE

July 10, 1994

TO: LINDA STONE, SUPREME COURT CLERK
P.O. BOX 249, JACKSON, MS 39205

RE: F. C. JOHNSON VS. JOHN HYNEMAN
93-CA-0608
420 PEYTON RD., HOLLY SPRINGS, MS 38635

DEAR LINDA STONE,

Please be advised that I am in receipt of the "MANDATE", you signed on or about July 7, 1994.

I am hereby requesting a certified copy of the Transcript and audio of the **proceeding** and/or hearing of June 16th, 1994, and a certified copy of the CERTIFIED FINAL JUDGMENT, per your letter (Mandate). Include the exact amount of the cost, certified and itemized to F. C. JOHNSON, per your letter (Mandate), and include a certified Docket Sheet.

/s/ Freddie C. Johnson
F. C. JOHNSON

August 2, 1994

TO: LINDA STONE, SUPREME COURT CLERK
P.O. BOX 249, JACKSON, MS 39205

RE: F. C. JOHNSON VS. JOHN HYNEMAN
93-CA-0608
420 PEYTON RD. W. HOLLY SPINGS
MISSISSIPPI 38635

DEAR LINDA STONE,

Please be advised that I have not received the requested **"certified copy of the transcript and audio"** of the proceeding and/or hearing of June 16th, 1994 or the requested **"certified final judgment"**, per you letter (Mandate) nor have I received the requested **"certified Docket Sheet"**, these afore mentioned requests were mailed to your attention on July 10th, 1994 see attached copies.

A failure to fulfill the above and previous request constitutes liability under **PRESLEY V. MISS. STATE HWY. COMM. 608 S02d 1288 (Miss. 1992).**

An immediate response is **REQUIRED.**

WITHOUT PREJUDICE,

/s/ Freddie Johnson
F. C. JOHNSON

September 2, 1994

Linda Stone Court Clerk
Supreme Court of Mississippi
P.O. Box 249
Jackson, MS 39205-0249

RE: 93-CA-00608

Dear Ms Stone,

I hereby request the following information:

First, on the 16th day of June 1994, there was an ORDER issued, by Chief Justice Hawkins, and Justices Sullivan and McRae, and it is signed by Justice Sullivan on the 16th day of June. I hereby request certified copies of; to wit:

1. The transcript of that hearing (cited above);
2. A copy of the audio tape of the above mentioned hearing;
3. A certified copy of the docket sheet pursuant to that said hearing:
4. Any fax, messages, memos, notes

writings of any sort or kind, relating to that said hearing.

5. A certified copy of the "Minutes" of this said hearing.

SEE COPY ATTACHED. EXHIBIT A

Second, on the 28th day of June, 1994 there was on ORDER issued, by Justices Pittman, Banks, and Roberts, and it bears no legible signature, it only says "FOR THE COURT" the date it was signed was the 25th of July. I hereby request certified copies of; to wit:

1. A certified statement from whichever of the Supreme Court Justice who signed the order of July 25, 1994, that he signed the said order.
2. A transcript of the hearing on the 25th of July 1994,
3. A copy of the audio tape of that said hearing.
4. Any fax messages, memos, notes, writings of any sort or kind

relating to that said hearing.

5. A certified copy of the "minutes" of this said hearing.

SEE COPY ATTACHED. EXHIBIT B

Also, please send a cost bill, certified and itemized of all the above requested, imperative information as soon as possible.

Respectfully,

/s/ Freddie C. Johnson
F. C. JOHNSON

FCJ/cj

(seal)

MANDATE

FROM THE

SUPREME COURT OF MISSISSIPPI

To The DeSoto County Circuit Court -

GREETINGS:

On 16th day of June, 1994, in proceedings held in the Courtroom, Carroll Gartin Justice Building, the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a final judgment as follows:

Supreme Court Case #93-CA-0608

Trial Court Case #CV91316CD

F. C. Johnson d/b/a F. C. Johnson Construction Company

VS.

John Hyneman

Appellee's Motion to Docket and Dismiss Appeal Granted.

Appellant is taxed with all costs of this appeal. Order entered.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

WITNESS, the Hon. Armis E. Hawkins, Chief Justice of the Supreme Court of Mississippi; also the signature of the Clerk and the Seal of said Court hereunto affixed, in the City o of Jackson, on July 7, 1994, A.D.

/s/ Linda Stone
Supreme Court Clerk

General Docket and Subpoenas - No 31

Civil Cases - DeSoto County

Circuit Court

_____ TERM, 19____

No. CV91-316-C/D

F. C. Johnson d/b/a
F. C. Johnson Construction Company

vs.

John Hyneman

Plaintiffs Attorneys: Michael L. Kemp
P.O. Box 93
Holly Springs,
Mississippi 38635

Defendants Attorneys: (None listed on Docket Sheet)

7/26/91 Complaint-filed

7/26/91 Summons issued & given back (for service upon John Hyneman)

11/15/92 Clerk's Motion To Dismiss for Want of Prosecution - filed

11/15/92 Copy to Attorney

12/11/92 Summons issued & del. to Shf. (for service upon defendant)

12/11/92 Do not dismiss case

12/18/92 Summons executed, returned &

filed. (John Hyneman served 12/17/92 by James Russell D.S.)

1/15/93 Response to Complaint and Counter-claim - filed

2/10/93 Verified Petition by Plaintiff for Order Permitting Withdrawal of Counsel - filed.

2/10/93 Petition for Extension of Time-filed

2/16/93 letter - filed

2/23/93 Affidavit In Support of Plaintiff's Response to Defendant's Response & Counter Claim

2/23/93 Notice and Demand For Common-law Jury Trial - filed

2/23/93 Petition to Withdraw or Remove filed

3/1/93 Defendant John Hyneman's First Request for Productions of Documents & Things From Plaiantiff F. C. Johnosn

3/1/93 Defendant John Hyneman's First Set of Interrogatories of Plain-

tiff Freddie Johnson

3/29/93 Petition for Protective Order

3/29/93 Original Plaintiff's Response and Objection To Defendant John Hyneman's First Set of Interrogatories

3/29/93 Original Plaintiff's Response and Objection To Defendant John Hyneman's First Request for Production of Documents and Things

3/29/93 Original Plaintiff's First Request For Production of Documents and Things from Original Defendant John Hyneman

4/1/93 Order Permitting Withdrawal of Counsel

4/2/93 Motion to Dismiss Complaint Without Prejudice

4/2/93 Motion for Partial Summanry Judgment

4/2/93 Notice of Hearing - 29th April, 1993, 9:00 A. M.

4/5/93 Amended Notice of Hearing - 23rd

April, 1993 at 9:00 A. M.

4/8/93 Response and Objections To Defendant's Motion For Partial Summary Judgment; Affidavit of Original Plaintiff & Memorandum at Law

4/8/93 Ex Parte Petition for Order To Set Aside Plaintiff's Affidavit & Memorandum at Law

4/8/93 Response & Objections To Notice of Hearing & Plaintiff's Affidavit

4/8/93 Plaintiff's Response To Defendant's Motion To Dismess Complaint w/o Prejudice; Affidavit of Plaintiff and Memorandum at law

4/8/93 Plaintiff's Rebutal To Defendant's Brief In Support of Partial Summary Judgment & Memorandum At Law

4/22/93 Response To Plaintiff's First Request for Production of

Documents and Things

4/23/93 Durable Power of Attorney In Fact

4/23/93 Court Reporter's Estimate of Cost For Appeal

5/5/93 Petition For A Certified Final Order; Memorandum at Law and Affidavit

5/14/93 Order Granting Motion to Dismiss Without Prejudice

5/18/93 Clerk's Estimate of Costs For Appeal Total Estimate $656.50

5/19/93 Notice of Appeal

5/19/93 Direction To Clerk of Circuit Court

5/19/93 Ck. for $656.00 - Appeal Costs

5/21/93 Mailed Copy of Notice of Appeal to Taylor D. Buntin, F. C. Johnson hand-delivered copy to Court Reporter Juanita Augustine

5/21/93 Mailed copy of Notice of Ap-

peal to Supreme Court Ck # 4043

5/26/93 Direction To The Clerk of Circuit Court

7/7/93 Letter to Linda Stone From Mr. Johnson

7/7/93 Certificate of Compliance with MSCR Rule 11(b)(1)

7/7/93 Direction To Clerk and Court Reporter of Circuit Court of DeSoto County

7/12/93 Court Reporter's Acknowledgment 9/8/93

7/12/93 Direction To Clerk and Court Reporter of Circuit Court of DeSoto County

7/30/93 Bill from Court Reporter $56.00 Ck. # 4160